The defence contended that the appellant acted in self-defence and was entitled to an acquittal or to a verdict of culpable homicide not amounting to murder under exception 2 of section 300. As has been explained, the jury by their verdict must have found an intention to cause death. In view of the fact that the deceased was unarmed it does not seem possible to bring the matter within the ambit of the exception, much less to justify a verdict of not guilty. Exception was taken to the direction in law on the question of self-defence. In view of what has been said above this appears to be immaterial.

The defence further argued that it was a case of grave and sudden provocation.

As regards exception 1, this by the Penal Code is a question of fact, and, therefore, not subject to the limitations found in English Law. The effect of exception 2 was, in our opinion, put to the jury with sufficient clearness.

It was, however, contended that there was insufficient direction on the question of burden of proof. The learned Judge in the plainest terms told the jury that the prosecution had to prove its case beyond reasonable doubt. As regards the question of grave and sudden provocation, the question of proof is clearly set out in section 106 of the Evidence Ordinance. Section 3 gives a definition of "proved", viz: "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

The learned Judge said to the jury "If you think that the accused was gravely and suddenly provoked, that he was deprived of his powers of self-control, it will be proper for you to convict of culpable homicide not amounting to murder. If, on the other hand, having weighed all the evidence together you are convinced that he is not covered by this exception, that is to say, you do not believe him, then that is, of course, murder".

That appears to us to be more favourable to the appellant than a strict application of the provisions of Evidence Ordinance. The facts on the issue of grave and sudden provocation were put to the jury in a way that was, if anything, favourable to the appellant.

On the state of the evidence the jury were amply justified in negativing the contention of the defence and the verdict is not open to attack.

As it appears to us that there is some uncertainty as to the application of certain English cases in this Colony, we think it proper to add some remarks on the subject. Since *Mancini's case*[1] it is clear that *Woolmington's case*[2] only applies to the question of intention. By the Penal Code the burden of proving intention in these cases has always been placed on the prosecution. Therefore *Woolmington's case*[2] has no effect here.

It should further be noted that the Evidence Ordinance only lays down one standard of proof whether the burden is on the prosecution or the defence.

We think that the practice of directing the jury that the Crown must prove its case beyond reasonable doubt, in so far as it imposes on the Crown a burden higher than that imposed by the Evidence Ordinance, is only a matter of practice, like the direction given concerning the evidence of accomplices. It is right, as a matter of prudence, that such a direction should be given; but, as in the case of accomplices, if the jury disregard the warning their verdict is not vitiated.

For the foregoing reasons we dismissed the appeal.

Appeal dismissed.

SEOW TAI KENG v. REGINA.

[A. Cr. J. (Brown, J.) May 27, 1953]

[Singapore — Magistrate's Appeal No. 219 of 1952]

Finance Regulations, 1950, Reg. 29(1) — Controller's power to require information — Incriminating statement — Evidence Ordinance, s. 24.

This was an appeal against the conviction of the appellant under reg. 17(1) of the Finance Regulations, 1950, on a charge that the appellant being resident in Malaya and entitled to sell 130 tahils of gold failed to offer or cause to be offered that gold for sale. The main evidence against the appellant was an incriminating statement made by the appellant to the Assistant Controller of Foreign Exchange, recorded under reg. 29(1) of the Finance Regulations. On appeal, it was argued that the statement was wrongfully admitted in evidence.

Held: (1) the Controller's power under reg. 29(1) of the Finance Regulations to require information is limited to two purposes, firstly to securing compliance with the Regulations and secondly to detecting evasions of the Regulations; (2) in this case the Controller exceeded his powers in taking the statement and the statement was inadmissible under s. 24 of the Evidence Ordinance.

MAGISTRATE'S APPEAL.

D. S. Marshall for the appellant.

A. V. Winslow (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Brown, J.: — The appellant was convicted under Reg. 17(1) of the Finance Regulations, 1950, upon a charge that he, being a person resident in Malaya and being entitled to sell 130 tahils of gold, did fail to offer, or cause to be offered, that gold for sale.

On 12th June the gold was discovered upon the premises of one Ng Seow Ng. On the 21st of June Mr. Gordon, the Asst. Controller of Foreign Exchange, in the exercise of his powers under Reg. 29(1), recorded a statement from Ng Seow Ng, in which he stated that the gold (26 bars) belonged to the appellant, who had brought it to him on or about the 8th of June for safe keeping. On 26th June Mr. Gordon recorded a statement from this appellant, in which he incriminated himself. Questions were put through an interpreter, and the information contained in the appellant's replies were written down in their running form. Before the questioning commenced the interpreter shewed the appellant Reg. 29 and told him that he had to answer all questions he was asked. This incriminating statement was the main evidence upon which the appellant was convicted.

This appeal has been argued on four grounds. Firstly it is said that if Reg. 29 empowers the Controller to compel a person to incriminate himself it is *ultra vires* the enabling section of the Ordinance because section 3(2) of the Ordinance does not enable Regulations to be made which contravene section 123(2) of the Criminal Procedure Code. But by section 5(2) of the Ordinance "any information given by a person in compliance with any Finance Regulation may be given in evidence against him *notwithstanding that it may tend to incriminate him.*" Mr. Marshall says that the Regulations were not made under that section. They were made under section 3(2)(f), which empowers the Governor in Council to make Regulations with respect to the information to be supplied by any person for the purpose of securing compliance with or detecting evasions of the provisions of the Regulations. Reg. 29 is *intra vires* section 3(2)(f) because it restricts the Controller's power of obtaining information to those two specific purposes. And provided the Controller confines himself to those two purposes, if a person makes an incriminating statement in the course of furnishing information which the Controller has the the power to obtain, that incriminating statement (by section 5(2)) may be given in evidence.

It was then argued that the provisions of section 24 of the Evidence Ordinance had been contravened in taking this statement because the interpreter, in explaining the provisions of Reg. 29, had in effect threatened the appellant by telling him that he had to answer all the questions he was then asked. The interpreter's evidence on this point is as follows :—

"I told him he had to answer all questions he was asked."

In cross-examination: "Reg. 29 was explained to him in Teochew that the Controller had power to ask what he required to know about foreign exchange matters."

In answer to a question by the Court: "I explained the important point of that section, that the Controller had power to ask what he required to know in regard to foreign exchange matters."

It seems to me that the interpreter was properly endeavouring to draw the appellant's attention to the law. I can see no vestige of a threat in what he said. But the appellant was, inadvertently, misled. It was not correct to tell him that he had to answer *all* questions which he was asked, because the Controller's powers to require information under Reg. 29 are limited to two specific matters.

And this brings me to what I regard as the substantial point in this appeal. By Reg. 29 the Controller's power to require information is limited to the following two purposes :—

(a) to securing compliance with the Regulations;
(b) to detecting evasion of the Regulations.

The pith of the complaint here is that the statement was recorded, not for either of those purposes, but for the sole purpose of furnishing material upon which the appellant could be prosecuted. On the 26th of June, when the statement was recorded, the gold was in the custody of the authorities. Then at that stage what compliance with the Regulations could be secured or what evasion of the Regulations could be detected? The compliance with the Regulations had already been secured by the seizure of the gold; and the continued evasion of the Regulations by the appellant had already been detected and frustrated. Moreover, the authorities at that stage were in possession of information, in the statement of Ng Seow Ng, upon which the appellant could be prosecuted, if they called Ng Seow Ng as a witness. Then what purpose was served by taking this statement from the appellant except to confirm and corroborate what Ng Seow Ng had already said and strengthen the case against the appellant by obtaining an incriminating statement? That is not one of the two purposes for which the Controller is empowered to require information under Reg. 29, and for which the Governor in Council is empowered to make Regulations under section 3(2)(f) of the Ordinance. It follows that the Controller, in taking this statement, exceeded his powers. And the appellent was induced to make this statement in the erroneous belief that he was bound by law to make it and could be punished if he did not. For that reason that statement was inadmissible under section 24 of the Evidence Ordinance. The conviction and sentence must be quashed, and the gold must be dealt with under Reg. 17(2) and price paid to the appellant in accordance with that Regulation.

It is therefore unnecessary, for the determination of this appeal, to decide the further point which was argued, namely that by Reg. 29 the directions which

the Controller is empowered to give must be in writing. The material part of the Regulation reads as follows :—

"The Controller may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to furnish..... information . . . . . ."

It is clear that, by whatever method the directions are given, the law requires the Controller to specify (a) the time within which, and (b) the manner in which, the person is required to furnish the information; and there is no evidence that he specified either matter in this case. There is indeed no evidence of how the statement came to be recorded. We do not know if the appellant was sent for, or how he came to be in Mr. Gordon's office. But the specifying of these two matters are legal requirements. The words "as may be specified in the directions" would incline one to the view that it is intended that the directions should be given in writing; and from an evidentiary point of view a document in writing would remove all doubt of whether these legal requirements had been observed, and would therefore be desirable. On the other hand, if the Controller gave verbal directions (over the telephone or otherwise) that the person should attend at his office on a certain day and at a certain time, there to furnish the required information verbally or otherwise, I do not know in what way the Regulation would be infringed. But the two important features of Reg. 29 are :—

(1) The words "within such time and in such manner as may be specified in the directions" require a measure of formality and a measure of notice; the Controller's power under reg. 29 is not the same as the power of a Police Officer making an investigation under Section 123 of the Criminal Procedure Code; and a person is not to be suddenly summoned to the Controller's Office, there to be questioned "ex improviso";

(2) That the Regulation is not to be used except to obtain information for the two limited purposes which are named therein.

Conviction and sentence quashed.

Re YEO JIN GUAT.

[C. A. (Mathew, C.J. (F.M.), Brown and Knight, JJ.) January 8, 1953]

[Singapore — Civil Appeals Nos. 25 & 27 of 1952]

Bankruptcy — Composition — Public Policy — Discretion of Court inspite of Creditors agreeing to a composition.

In this case a Receiving Order was made against Yeo Jin Guat on his own petition on the 3rd of June, 1952. The statement of affairs was submitted and lodged on the 11th of October, 1952, showing total gross liabilities at $3,939,509.57 and assets estimated to produce a total of $554,558.50. The number of creditors including one partly secured creditor total about 1,000.

At the first creditors' meeting held on the 10th September 1952, a special resolution to entertain the proposal of the debtor to pay a composition of 15% was passed by the creditors present either in person or by proxy.

At the subsequent meeting of creditors held on the 29th October, 1952, the meeting confirmed the resolution passed during the first meeting by the requisite majority in number and three-fourths in value of all the creditors who have proved. The opinion of the Official Assignee was that the composition offered cannot be less favourable to the creditors than a dividend in bankruptcy and is therefore probably to the creditor's advantage. Though the offer of 15% must be considered as undoubtedly low, the requisite statutory majority of creditors have decided to accept the composition.

The failure of the bankrupt's business was attributed to heavy interest paid to depositors — 48% in most cases, keen competition in the match business following the closure of imports of matches to Indonesia. There was also evidence that the debtor contracted debts amounting to $120,000 without having any reasonable grounds of expectation of being able to pay them. On the view that the composition would be more favourable to the creditors, the Official Assignee did not object to the proposed composition.

The Chief Justice, before whom the application for the consideration of composition came for hearing, dismissed the same on the ground that in view of the very small dividend proposed, the extent of the liabilities and the conduct of the debtor, the composition should not be approved. Against this decision the bankrupt appealed to the Court of Appeal.

Held, dismissing the appeal: it is not for the Court to approve a composition merely because the majority of the creditors have voted for it.

BANKRUPTCY APPEAL.

D. S. Marshall for the bankrupt.

N. L. Macassey (*J. Pillai* with him) for a number of creditors.

W. G. Alcock, Official Assignee (*S. E. Teh* with him), in person.

Mathew, C.J., (F.M.) delivering the judgment of the Court of Appeal said: — This was an appeal against an order refusing to approve a composition. The learned Chief Justice gave the following grounds for his decision :—

"In view of the very small dividend proposed, the extent of the liabilities and the conduct of the debtor, I was very strongly of the opinion that the composition proposed should not be approved."

Mr. Macassey, for the creditors who voted for the composition, argued at length that the learned Chief Justice had not exercised his discretion on proper principles. Cases setting out these principles were cited to the learned Chief Justice, and it was quite clear that those principles were in his mind when he gave his decision.

It was a question, as it always is, to arrive at a decision having regard to the public interest and commercial morality on the one hand and the best interests of the creditors on the other. It is not for the Court to approve a composition merely because the majority of the creditors have voted for it.

The debtor, between January and June 1952, borrowed more than $120,000 which he knew he had no hope of repaying. He acted in a manner which, to use the mildest possible term, could only be regarded